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DAN SMOOT

THE FORKED TONGUE

In the past 18 months, Supreme Court Justice William O. Douglas has written four articles for *Playboy* — a girlie magazine which appeals largely to pruriency, but cunningly stays on the safe side of that indefinite line separating provocative lewdness from hard core pornography.

Justice Douglas's articles in *Playboy* are in no way lewd. They are all on serious subjects, and, for that reason alone, are out of place in *Playboy*. It is rather apparent that Hugh Hefner is not purchasing Douglas's articles for their contents: he is hiring the byline of a Justice of the United States Supreme Court. It is a cheap way to buy respectability for a trashy magazine; and it is prima-facie evidence that Douglas is a disgrace to the bench, because he has no sense of propriety, no respect for himself or for the position he holds.

Douglas's most recent *Playboy* article ("The Public Be Damned," July, 1969) has created a storm in Congress. It is an attack: (1) on the Army Corps of Engineers for building huge dams for navigation, flood-control, recreation, power-production, and water-storage — uneconomical and impractical dams which do more harm than good; and (2) on Members of Congress who lobby for and authorize such dam-building because it is rich in pork-barrel benefits for constituents.

There are inaccuracies in this *Playboy* article. For example, Douglas says the multi-billion-dollar boondoggle of building a 370-mile inland canal from Fort Worth to Houston is "now a reality." Fortunately, this is not so. Powerful and insistent lobbying for a Trinity River canal has been going on for more than thirty years; and much tax money has been wasted on surveys and studies; but the project has not yet been started or even authorized.

Federal dam-building *has* ruined many of our great rivers, permanently destroyed some of the best forests and farmlands in the country, and damaged vital underground water systems. Douglas, however, does not mention the most sinister consequences of these government operations — namely, that they are

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unconstitutional and are therefore undermining the foundation of our constitutional Republic; that they are socializing the power industry and putting government in control of the economy of entire regions; that government-built canals provide subsidies for certain segments of the population, at the expense of all taxpayers. Moreover, Douglas was long among the foremost in supporting the TVA system, which is the masterpiece and prototype of the big-dam foolishness he now condemns.

Whether one approves or disapproves government dam-building, however, everyone knows it is a controversial, legally-complicated operation. It produces litigation which gets into federal courts. Speaking or writing publicly on such a subject is manifestly improper for a Supreme Court Justice.

In the January, 1969, issue of *Playboy*, Justice Douglas has an article entitled "Civil Liberties: The Crucial Issue." Here is his opening paragraph:

"Most modern constitutions contain promises of things that government must do for people. Our Constitution, an 18th Century product, guarantees no one such benefits as an education, social security or the right to work. It is not a welfare-state document. To the contrary, it specifies in some detail what government may *not* do to the individual. In other words, it was designed to take government off the backs of people. . . ."

Paleface Douglas speak with forked tongue again.

His brief summary of the basic meaning of our Constitution and Bill of Rights is what I and other constitutionalists have been saying for many years. Douglas, however, as a judge on the high court, and as a speaker and writer, has consistently fostered (and, in some of his court decisions, forced) the growth of the illegal federal welfare-state that now stands on "the backs of the people" with crushing weight.

The dishonest cynicism of Justice Douglas becomes apparent as one reads his *Playboy* piece on "Civil Liberties." Having predicated his article on an unassailable statement of *the* basic American constitutional principle, he then twists that principle into a justification of lawless violence, and uses it as a springboard for attacking decent Americans who are demanding the restoration of law and order. Here are excerpts from Justice Douglas's *Playboy* article on "Civil Liberties":

"Law and order is the guiding star of totalitarians, not of free men. . . .

"The Fourth Amendment . . . in general, requires an officer making a search to have a warrant issued by a judge on a showing of probable cause that a crime has been committed. And the warrant must describe with particularity the scope of the search and the articles or person to be seized. . . . Yet the law-and-order propagandists would brush aside the Fourth Amendment and use any short cut to convict any unpopular person. . . .

"Law-and-order propagandists denounce the [Supreme Court] decisions that forbid the police from using coercion to obtain confessions from people in custody.

"The protection against double jeopardy, the right to counsel, the right to confront the person who accuses one, the guarantee against cruel and unusual punishment — these all . . . . [reflect] a clear and calculated design to prevent government from meddling with individual lives.

"The law-and-order people say that 'criminals' and 'Communists' deserve no such protection. . . .

"We face civil disobedience on a massive scale.

"Civil disobedience, though at times abused, has an honored place in our traditions. Some people refuse to pay taxes because the money raised is for a purpose they disapprove. That is *not* a permissible course of conduct. . . . It would paralyze government to let each taxpayer

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exercise the sovereign right to pay or not to pay, depending on whether he approves of the social, economic or political program of those in power. . . .

"These days, some people are caught in a pot of glue and have no chance to escape through use of a political remedy. Civil disobedience, therefore, evolves into revolution and is used as a means of escape.

"Revolution is therefore basic in the rights of man. Where problems and oppression pile high and citizens are denied all recourse to political remedies, only revolution is left. Sometimes revolution with violence is the only remedy. . . .

"Today the dissenters, both black and white, claim that the changes needed to admit the lower fourth of our people into an honored place in our society are being thwarted. . . . The puritan ethic — hard work and industry will guarantee success — is not valid in a system of private enterprise that is less and less dependent on labor. For many, the only recourse for employment is in the public sector; yet blueprints for an expanding public sector are hardly ever in public view. Racial discrimination takes an awful toll. . . .

"Blacks and whites must join hands in momentous programs of political action. Those who put law and order above liberty and equality are architects of a new fascism that would muzzle all dissenters and pay the individuals in our lower strata to remain poor, obedient and subservient."

Note that Douglas condones violence, by nontaxpayers, to force the government to provide them benefits which are paid for out of money confiscated from taxpayers; but he firmly denies that taxpayers have a right to resist being plundered.

I doubt that *any* American presently demanding law and order wants to oppress, or waive the constitutional rights of, anyone. Constitutionalists want stern, impartial, adequate law enforcement and justice that will punish rioters, demonstrators, subversives, criminals, or anyone else who violates law. Civilization cannot otherwise be sustained. But it is a lie to say that constitutionalists want to "brush aside the Fourth Amendment and use any short cut to convict any unpopular person."

Constitutionalists have long resented the federal government's *violations* of their Fourth Amendment protections against illegal searches and seizures — by federal agents who (without any legal process) often rummage through a taxpayer's records, and disrupt the operations of his business, while on fishing expeditions to discover some possible violation of a bureaucratic regulation. Having endured this kind of violation of their own Fourth Amendment protections, constitutionalists are outraged at federal court decisions which free known criminals because police officers, when arresting a person in the act of committing one crime, accidentally find evidence of a more serious crime. Federal courts have distorted the meaning of the Fourth Amendment in such cases by ruling that the evidence of the major crime, which police fortuitously found in the possession of a person legally arrested for another crime, was not admissible because the police had no warrant for seizing the evidence they found accidentally.

It is a lie to say that constitutionalists approve police use of force to obtain confessions: they are outraged at the Supreme Court corruption of the meaning of the Fifth Amendment, with decisions freeing criminals who willingly and voluntarily confessed their crimes.

It is a lie to say that constitutionalists want to deny communists and criminals due procedures and constitutional protections: they are outraged at Supreme Court decisions which so distort the meaning of the Constitution that police and lower courts cannot protect society against lawbreakers.

Having laced his *Playboy* article with pretensions of respect for the American Constitution, Justice Douglas concludes with an oblique recommendation that our constitutional system be overturned, by force and violence if necessary, and

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replaced with a system alien and hostile to American concepts of government. Douglas says:

"Unprecedented civic action is needed. . . . Those who march need specific proposals in their hands — proposals to put an end to a particular injustice. India, when dealing with the explosive problem of the untouchables, required about 15 per cent of all matriculating students and about 15 per cent of all government employees to be drawn from those ranks. While the maximum age for taking examinations for government service was generally 24 years, it was increased to 27 years in the case of the untouchables. And this once-abhorred group also has a certain minimum number of seats reserved for it in the national parliament and in the state legislatures.

"We need to think in terms as specific as those in dealing with our own minorities. . . ."

What can a decent person say about Justice Douglas's connection with Ralph Ginzburg, the nation's most notorious operator of "the sordid business of pandering"?

In 1966, the Supreme Court, in a 5-4 decision, upheld an obscenity conviction, against Ralph Ginzburg, for distributing pornographic publications. The Court majority said "there was abundant evidence to show that each of the accused publications was originated or sold as stock in trade of the sordid business of pandering." Douglas dissented.(1)

Later, Ginzburg started another publication, *Avant-Garde*. Justice Douglas has an article on folksingers in the March, 1969, issue of this Ginzburg magazine — for which he was paid $350. At the time Douglas wrote the article, Ginzburg had two court cases on appeal. Either one or both could come before the Supreme Court.

Ginzburg is appealing his obscenity conviction in a lower court in Philadelphia, on the grounds that it was too severe. He is also appealing a libel judgement against him that was won by Senator Barry Goldwater.(1)

Senator Paul Fannin (Arizona Republican) was one of many who criticized Douglas for the *Avant-Garde* article. Ginzburg came to the defense of his friend, saying:

"William O. Douglas is a shining example of everything noble and beautiful about America. For a mediocre character like Senator Fannin to try to cast a shadow on Mr. Douglas's light is a national disgrace."(1)

As long as he is on the bench, William O. Douglas is a "shining example" of congressional dereliction of duty. Congress has abundant reasons and ample grounds for impeaching Douglas and removing him from the Supreme Court.

Following that, the Department of Justice should initiate prosecution against Douglas, just as the Department should now be initiating prosecution against Abe Fortas.

Getting both of these men off the Supreme Court (and in jail, if guilty of crime) would have a wholesome effect. But that would not solve all our problems with the Supreme Court. The Court has become such an arrogant, lawless, and powerful oligarchy that something more must be done.

LATER: suggestions on curbing the Court.

FOOTNOTE

(1) *Dallas Times Herald*, May 29, 1969, p. A21

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